

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MAXIMINO BUENAVENTURA,
ALEJANDRO DOMINGUEZ LOPEZ,
MARCELO HERNANDEZ AND ELOY
PUMARINO, INDIVIDUALLY AND ON
BEHALF OF OTHER PERSONS
SIMILARLY SITUATED,

Plaintiff,

v.

CHAMPION DRYWALL, INC. OF
NEVADA, PAUL DIGUISEPPI, DENISE
DIGUISEPPI, RON RUBY, ED
GOLCHUK, TCR NEVADA
CONSTRUCTION LIMITED
PARTNERSHIP, WARMINGTON
HOMES NEVADA, VANGUARD
CONSTRUCTION, LLC, AND KB
HOME NEVADA INC.

Defendants.

Case No. 2:10-CV-00377-LDG-RJJ

**ORDER ON CLERK'S ACTION
PURSUANT TO FRCP 54(d)(1) AND
ALTERNATIVE MOTION FOR FINAL
JUDGMENT**

Defendants TCR Nevada Construction Limited Partnership, KB Homes Nevada, Inc., and Warmington Homes Nevada ("General Contractors") filed a Reply In Support of Bill of Costs (#115), or in the Alternative Motion for Final Judgement (#116). The Court will uphold the Clerk of the Court's decision (#114) denying the General Contractors's Bill of Costs and will deny the Motion for Final Judgment pursuant to Federal Rules of Civil Procedure 54(b).

1 Bill of Costs

2 Pursuant to Federal Rules of Civil Procedure 54(d)(1) the Court may allow costs,
3 other than attorney's fees, to the prevailing party. Furthermore, "the taxing of costs rests in
4 the sound judicial discretion of the trial court." *Rosenfield v. Kay Jewelry Stores, Inc.*, 400
5 F.2d 89, 90 (10th Cir.1968) (citation omitted). A review of the docket establishes that the
6 Court has not entered a final judgment in this matter, an essential element to the Clerk
7 being able to tax costs under Local Rule 54-1(a). Accordingly, the Court will deny the
8 General Contractors' request to review the Clerk of the Court's determination denying their
9 Bill of Costs.

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11 Motion for Final Judgment

12 In the alternative, the General Contractors move for a final judgment with respect to
13 the claims against them and with respect to this Court's earlier granting of the General
14 Contractors' previous Motion for Summary Judgment (Dkt.110). This alternative motion
15 was filed pursuant to Fed. R. Civ. P. 54(b), which grants that "the court may direct entry of
16 a final judgment as to one or more, but fewer than all, claims or parties . . ." A district court
17 has discretion when deciding whether to enter judgment under Rule 54(b). See
18 *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8, 100 S.Ct. 1460, 64 L.Ed.2d 1,
19 (1980). A district court must first determine that there "is a decision upon a cognizable
20 claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an
21 individual claim entered in the course of a multiple claims action.'" *Id.* at 7 (quoting *Sears,*
22 *Roebuck & Co. v. Mackey*, 351 U.S. 427, 436, 76 S.Ct. 895, 100 L.Ed. 1297 (1956)).

23 Next, "the district court must go on to determine whether there is any just reason for
24 delay." *Id.* at 8. In making this determination, a district court should "consider such factors
25 as whether the claims under review were separable from the others remaining to be
26 adjudicated and whether the nature of the claims already determined was such that no

1 appellate court would have to decide the same issues more than once even if there were
2 subsequent appeals.” *Curtis-Wright*, 446 U.S. at 8. Such factors are important in order to
3 “assure that application of the Rule effectively ‘preserves the historic federal policy against
4 piecemeal appeals.’ ” *Id.* (quoting *Mackey*, 351 U.S. at 438).

5 Nevertheless, in the 1961 Amendment Advisory Committee notes to Rule 54, the
6 rule is held to be largely inapplicable to judgments absolving some but not all parties where
7 the claims are either the same or interrelated. In fact, the 9th Circuit, prior to this
8 Amendment, ruled that where some of the defendants are dismissed, but the claim against
9 them is the same as the claim against all other defendants, then no final judgment can be
10 entered with respect to those dismissed defendants. See *Steiner v. 20th Century-Fox Film*
11 *Corp.*, 220 F.2d 105, 107 (9th Cir.1955). The ruling in *Steiner* reflects the historic rule of
12 federal courts against piecemeal disposal of litigation, thus permitting appeals only from
13 final judgments except where covered by statute. See Fed. R. Civ. P. 54 (1946
14 Amendment, Note 1).

15 Thus, “[i]t is left to the sound judicial discretion of the district court to determine the
16 ‘appropriate time’ when each final decision in a multiple claims action is ready for appeal.
17 This discretion is to be exercised ‘in the interest of sound judicial administration.’ ” *Wood v.*
18 *GCC Bend, LLC*, 442 F.3d 873 (9th Cir. 2005); see also *Curtis-Wright*, 446 US at 8, 100
19 S.Ct.1460 (quoting *Mackey*, 351 U.S. at 437, 76 S.Ct. 895).

20 Since the claims against the General Contractors arise from the same core set of
21 operative facts as those brought against the other defendants, the Court is concerned that
22 if it were to grant the Motion for Final Judgment, a “piecemeal appeals” process would
23 ensue, forcing the Court of Appeals to hear, potentially, multiple cases based on the same
24 set of facts. Given the historical presumption against such events, and in light of the
25 relative low cost to the General Contractors to stay involved in this case, this Court is not
26 persuaded by the Motion for Final Judgment. This Court’s determination to not exercise its

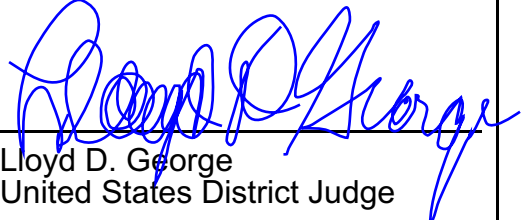
1 discretion and enter final judgment as to the General Contractors is bolstered by the ruling
2 in *Steiner* and the 1961 Amendment Advisory Committee notes to Rule 54.

3
4 Accordingly,

5 THE COURT **ORDERS** that TCR Nevada Construction Limited Partnership, KB
6 Homes Nevada, Inc., and Warmington Homes Nevada's Request (#115) that the Court
7 review the Clerk of the Court's denial (#110) of their Bill of Costs is DENIED.

8 THE COURT FURTHER **ORDERS** that TCR Nevada Construction Limited
9 Partnership, KB Homes Nevada, Inc., and Warmington Homes Nevada's Motion, in the
10 Alternative, for Final Judgment (#116) is DENIED.

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12 DATED this 10 day of August, 2012.

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15 Lloyd D. George
16 United States District Judge
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